

ACTIONS

§ 161.706 What actions does BIA take against trespassers?

If the trespasser fails to take the corrective action as specified, BIA may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. BIA may keep the property seized for use as evidence.

(b) Assess penalties, damages, and costs under § 161.712.

§ 161.707 When will BIA impound unauthorized livestock or other property?

BIA will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after 5 days of providing notice of impoundment if the trespasser failed to correct the trespass.

§ 161.708 How are trespassers notified of impoundments?

(a) If the trespass is not corrected in the time specified in the initial trespass notice, BIA will send written notice of its intent to impound unauthorized livestock or other property to:

(1) The unauthorized livestock or property owner or representative; and

(2) Any known lien holder of the unauthorized livestock or other property.

(b) If BIA determines that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, a public notice of intent to impound will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricul-

tural lands where the trespass is occurring.

(c) After BIA has given notice as described in § 161.707, unauthorized livestock or other property will be impounded without any further notice.

§ 161.709 What happens after unauthorized livestock or other property are impounded?

Following the impoundment of unauthorized livestock or other property, BIA will provide notice that the impounded property will be sold as follows:

(a) BIA will provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed before the sale.

(b) BIA will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least 5 days after the publication and posting of notice.

§ 161.710 How can impounded livestock or other property be redeemed?

Impounded livestock or other property may be redeemed by submitting proof of ownership and paying all penalties, damages, and costs under § 161.712 and completing all corrective actions identified by BIA under § 161.704.

§ 161.711 How will BIA sell impounded livestock or other property?

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property before the time set by the sale, by submitting proof of ownership and settling all obligations under §§ 161.704 and 161.712, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the

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owner, condemned and destroyed, or otherwise disposed of.

(c) BIA will give the purchaser a bill of sale or other written receipt evidencing the sale.

PENALTIES, DAMAGES, AND COSTS

§ 161.712 What are the penalties, damages, and costs payable by trespassers?

Trespassers on Navajo Partitioned Lands must pay the following penalties and costs:

(a) Collection of the value of the products illegally used or removed plus a penalty of double their values;

(b) Costs associated with any damage to Navajo Partitioned Lands and/or property;

(c) The costs associated with enforcement of the provisions, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 161.707; and

(e) All other penalties authorized by law.

§ 161.713 How will BIA determine the amount of damages to Navajo Partitioned Lands?

(a) BIA will determine the damages by considering the costs of rehabilitation and re-vegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

(b) BIA will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of the products or property.

(c) BIA will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

§ 161.714 How will BIA determine the costs associated with enforcement of the trespass?

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of

damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

§ 161.715 What will BIA do if a trespasser fails to pay penalties, damages and costs?

This section applies if a trespasser fails to pay the assessed penalties, damages, and costs as directed. Unless otherwise provided by applicable Navajo Nation law, BIA will:

(a) Refuse to issue the permittee a permit for any use of Navajo Partitioned Lands; and

(b) Forward the case for appropriate legal action.

§ 161.716 How are the proceeds from trespass distributed?

Unless otherwise provided by Navajo Nation law:

(a) BIA will treat any amounts recovered under § 161.712 as proceeds from the sale of agricultural property from the Navajo Partitioned Lands upon which the trespass occurred.

(b) Proceeds recovered under § 161.712 may be distributed to:

(1) Repair damages of the Navajo Partitioned Lands and property; or

(2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit.

(c) Reimburse for costs associated with the enforcement.

(d) If any money is left over after the distribution of the proceeds described in paragraph (b) of this section, BIA will return it to the trespasser or, where the owner of the impounded property cannot be identified within 180 days, the net proceeds of the sale will be deposited into the appropriate Navajo Nation account or transferred to the Navajo Nation under applicable tribal law.

§ 161.717 What happens if BIA does not collect enough money to satisfy the penalty?

BIA will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within 5 business days from the date of